

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SENIOR HOUSING ASSISTANCE GROUP,

No. 2:17-cv-01115-RSM

Plaintiff/Counter-  
Defendant,

**AGREEMENT REGARDING  
DISCOVERY OF ELECTRONICALLY  
STORED INFORMATION AND  
[PROPOSED] ORDER**

v.

AMTAX HOLDINGS 260, LLC, et al.

Defendants/Counter-  
Plaintiffs.

AMTAX HOLDINGS 260, LLC, et al.,

Third-Party Plaintiffs,

v.

SENIOR HOUSING ASSISTANCE  
CORPORATION, et al.

Third-Party Defendants.

The parties hereby stipulate to the following provisions regarding the discovery of  
electronically stored information (“ESI”) in this matter:

*Agreement Regarding Discovery of Electronically  
Stored Information and Order - 1  
(2:17-cv-01115-RSM)*

**HILLIS CLARK MARTIN & PETERSON P.S.**  
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**A. General Principles**

1. An attorney's zealous representation of a client is not compromised by conducting discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate in facilitating and reasonably limiting discovery requests and responses raises litigation costs and contributes to the risk of sanctions.

2. The proportionality standard set forth in Fed. R. Civ. P. 26(b)(1) must be applied in each case when formulating a discovery plan. To further the application of the proportionality standard in discovery, requests for production of ESI and related responses should be reasonably targeted, clear, and as specific as possible.

**B. ESI Disclosures**

Within 30 days after the Rule 26(f) conference, or at a later time if agreed to by the parties, each party shall disclose:

1. Custodians. The five custodians most likely to have discoverable ESI in their possession, custody or control. The custodians shall be identified by name, title, connection to the instant litigation, and the type of the information under his/her control.

2. Non-custodial Data Sources. A list of non-custodial data sources (e.g. shared drives, servers, etc.), if any, likely to contain discoverable ESI.

3. Third-Party Data Sources. A list of third-party data sources, if any, likely to contain discoverable ESI (e.g. third-party email and/or mobile device providers, "cloud" storage, etc.) and, for each such source, the extent to which a party is (or is not) able to preserve information stored in the third-party data source.

1           4.     Inaccessible Data. A list of data sources, if any, likely to contain discoverable  
2 ESI (by type, date, custodian, electronic system or other criteria sufficient to specifically  
3 identify the data source) that a party asserts is not reasonably accessible under  
4 Fed. R. Civ. P. 26(b)(2)(B).  
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6           **C.     Preservation of ESI**

7           The parties acknowledge that they have a common law obligation to take reasonable  
8 and proportional steps to preserve discoverable information in the party's possession, custody  
9 or control. With respect to preservation of ESI, the parties agree as follows:

10           1.     Absent a showing of good cause by the requesting party, the parties shall not  
11 be required to modify the procedures used by them in the ordinary course of business to back-  
12 up and archive data; provided, however, that the parties shall preserve all discoverable ESI in  
13 their possession, custody or control.  
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15           2.     All parties shall supplement their disclosures in accordance with Rule 26(e)  
16 with discoverable ESI responsive to a particular discovery request or mandatory disclosure  
17 where that data is created after a disclosure or response is made (unless excluded under (C)(3)  
18 or (D)(1)-(2) below).  
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20           3.     Absent a showing of good cause by the requesting party, the following  
21 categories of ESI need not be preserved:

22           a.     Deleted, slack, fragmented, or other data only accessible by forensics.

23           b.     Random access memory (RAM), temporary files, or other ephemeral data that  
24 are difficult to preserve without disabling the operating system.  
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1 c. On-line access data such as temporary internet files, history, cache, cookies,  
2 and the like.

3 d. Data in metadata fields that are frequently updated automatically, such as last-  
4 opened dates (see also Section (E)(5)).

5 e. Back-up data that are substantially duplicative of data that are more accessible  
6 elsewhere.

7 f. Server, system or network logs.

8 g. Data remaining from systems no longer in use that is unintelligible on the  
9 systems in use.

10 h. Electronic data (e.g. email, calendars, contact data, and notes) sent to or from  
11 mobile devices (e.g., iPhone, iPad, Android, and Blackberry devices), provided that a copy of  
12 all such electronic data is routinely saved elsewhere (such as on a server, laptop, desktop  
13 computer, or “cloud” storage).

14 **D. Privilege**

15 1. With respect to privileged or work-product information generated after the  
16 filing of the complaint, parties are not required to include any such information in privilege  
17 logs.

18 2. Activities undertaken in compliance with the duty to preserve information are  
19 protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

20 3. Information produced in discovery that is protected as privileged or work  
21 product shall be immediately returned to the producing party, and its production shall not  
22 constitute a waiver of such protection, if: (i) such information appears on its face to have been  
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1 inadvertently produced or (ii) the producing party provides notice within 15 days of discovery  
2 by the producing party of the inadvertent production.

3 **E. ESI Discovery Procedures**

4 1. On-site inspection of electronic media. Such an inspection shall not be  
5 permitted absent a demonstration by the requesting party of specific need and good cause or  
6 by agreement of the parties.

7  
8 2. Search methodology. The parties shall timely attempt to reach agreement on  
9 appropriate search terms, or an appropriate computer- or technology-aided methodology,  
10 before any such effort is undertaken. The parties shall continue to cooperate in revising the  
11 appropriateness of the search terms or computer- or technology-aided methodology.

12 In the absence of agreement on appropriate search terms, or an appropriate computer-  
13 or technology-aided methodology, the following procedures shall apply:

14 a. A producing party shall disclose the search terms or queries, if any, and  
15 methodology that it proposes to use to locate ESI likely to contain discoverable information.  
16 The parties shall meet and confer to attempt to reach an agreement on the producing party's  
17 search terms and/or other methodology.

18 b. If search terms or queries are used to locate ESI likely to contain discoverable  
19 information, a requesting party is entitled to no more than five additional terms or queries to  
20 be used in connection with further electronic searches absent a showing of good cause or  
21 agreement of the parties. The five additional terms or queries, if any, must be provided by the  
22 requesting party within 14 days of receipt of the producing party's production.  
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1 c. Focused terms and queries should be employed; broad terms or queries, such  
2 as product and company names, generally should be avoided. Absent a showing of good  
3 cause, each search term or query returning more than 250 megabytes of data are presumed to  
4 be overbroad, excluding Microsoft PowerPoint files, image and audio files, and similarly  
5 large file types.

6  
7 d. The producing party shall search both non-custodial data sources and ESI  
8 maintained by the custodians identified above.

9 3. Format. The parties agree that ESI will be produced to the requesting party  
10 with searchable text, in a format to be decided between the parties. Acceptable formats  
11 include, but are not limited to, native files, multi-page TIFFs (with a companion OCR or  
12 extracted text file), single-page TIFFs (only with load files for e-discovery software that  
13 includes metadata fields identifying natural document breaks and also includes companion  
14 OCR and/or extracted text files), and searchable PDF. Unless otherwise agreed to by the  
15 parties, files that are not easily converted to image format, such as spreadsheet, database and  
16 drawing files, should be produced in native format.

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18 4. De-duplication. The parties may de-duplicate their ESI production across  
19 custodial and non-custodial data sources after disclosure to the requesting party.

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5. Metadata fields. If the requesting party seeks metadata, the parties agree that only the following metadata fields need be produced: document type; custodian and duplicate custodians; author/from; recipient/to, cc and bcc; title/subject; file name and size; original file path; date and time created, sent, modified and/or received; and hash value.

DATED this 6th day of October, 2017.

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**ORDER**

Based on the foregoing, IT IS SO ORDERED.

DATE: THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2017

\_\_\_\_\_  
The Honorable Ricardo S. Martinez  
UNITED STATES DISTRICT JUDGE

*Agreement Regarding Discovery of Electronically  
Stored Information and Order - 8  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 6th day of October, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 6th day of October, 2017 at Seattle, Washington.

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